

The 9th November, 1978.

No. 11(112) 3 Lab.78/9600.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s. Saraswati Iron Foundry and Engineering Works, Smalkha.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK.

Reference No. 41 of 1976

between

SHRI ZILE SINGH WORKMAN AND THE MANAGEMENT OF M/S. SARASWATI IRON FOUNDRY & ENGG. WORKS, SMALKHA.

AWARD

By order No. ID/KNL/188-D-75/19622, dated 7th June, 1976 the Governor of Haryana, referred the following dispute, between the management of M/s. Saraswati Iron Foundry & Engg. Works Smalkha and its workman Shri Zile Singh to this Court, for adjudication in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri Zile Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of order of reference notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties the following issues were framed by my learned predecessor on 4th April, 1977 :—

(1) Whether the workman lost his lien on the job as a result of his continued absence from duty from 9th August, 1975 till 31st August, 1975, under Certified Standing Orders of the management ?

(2) Whether the termination of services of Shri Zile Singh was justified and in

order ? If not, to what relief is he entitled ?

The case was fixed for the evidence of the management. The management examined one Shri Bhagwan Dass their clerk as MW-1. The management also examined Shri Mam Chand their Managing partner as MW-2 and closed their case. Then the case was fixed for the evidence of the workman. The workman examined himself as WW-1 and closed his case. Arguments have been heard. I, now give my findings issueswise.

The workman states that the management terminated their services on 9th August, 1975. The demand notice is dated 12th September, 1975. MW-1 stated that the workman worked with them at three different times and that the workman was marked absent from 9th August, 1975 to 31st August, 1975. Thereafter his name was not carried over to the next month. He further deposed that the workman was a habitual absentee from July, 1972 to July, 1975 during the period described in the written statement Ex. M-1. The details were worked out from the attendance register. He was not cross examined as to the absence of the workman simply two questions regarding earned leave and casual leave were asked. MW-2 corroborated the statement of MW-1. He proved that the entries in the register from which Ex. M-1 was prepared are in his handwriting. He further stated that the workman absented from duty from the 2nd half of 9th August, 1975 and continued absenting himself upto 31st August, 1975. Thereafter his name was not taken over in the next month as a result of long continued absence. He also produced the copy of relevant Standing Orders Ex. M-2 i.e. clause 10-H of the Standing Orders. In cross examination he stated that the workman was shown on leave on 12th April, 1975 although his leave application was not with them. He further stated that the workman was not charge-sheeted for absence from duty and was not declared as a habitual absentee. WW-1 the workman concerned stated that he was drawing Rs. 220 p.m. when his services were terminated. He was not at fault and that the management neither served him any charge-sheet nor held any enquiry. They terminated his services abruptly on 9th August, 1975. He admitted that he was getting leave with pay as well as without pay and leave application remained in the custody of the management. He further admitted that he was informed regarding

absence upto 1975. He further stated that he was a member of the workers union. He further stated there was quarrel between the workman and the management at Smalkha in the factory of M/s. Punjab Iron Foundry, as a result whereof the management of all factories became hostile to their workmen and began to turn them out from their factories. He stated that he was victimised. He stated that he did not give demand notice but again said that he had given demand notice. In cross-examination he stated that quarrel at Smalkha had arisen in the year 1973. He was present at the time of that quarrel which resulted in a Court case which was pending. He, however, could not tell the place where the case proceeded. He admitted that he did not appear as a witness in that case and he also admitted that no F.I.R. was lodged against him. He further admitted that he was unconcerned in that dispute. He stated that he did not tell regarding that dispute to his representative. He denied that the plea of quarrel was an after thought. He further admitted that there were 1000 workmen who were such members. He admitted that the minutes of the meeting were recorded but he never signed any minutes. He admitted in cross-examination that on 9th August, 1975 he had left the factory after doing half day work but he stated that the management did not give him work thereafter. He disclosed his ignorance regarding any letter written by him prior to 12th September, 1975. He denied the suggestion of habitual absentee and denied that he abandoned his job on and from 9th August, 1975. It is an admission of the workman that he had left the factory after doing half day work on 9th August, 1975. The workman has denied that he was habitual absentee. Although he stated that the management terminated his services, but did not state in his examination in chief that he was not absent. The plea of victimisation does not convince me, as it neither finds place in demand notice nor any claim statement nor any replication of the workman. Moreover the quarrel at Smalkha had taken place in the year 1973 whereas in the instant case the date of dispute is 9th August, 1975. Moreover the workman could not give any detail of quarrel in his cross-examination. He admitted that he was unconcerned in the dispute. There was no F.I.R. against him. He was not a witness in that case. Therefore the victimisation of the workman is not brought home. It seems that the plea of victimisation for trade union activities is an after thought. Even no document of the work-

man has been placed on the file. The crucial point for determination is as to whether the workman absented himself on and from 2nd half of 9th August, 1975 till 31st August, 1975 for that the management turned him out of employment at or after the time of 2nd half of 9th August, 1975. It is quite clear that the workman never wrote any letter, letter or complaint till 12th September, 1975 to any officer of the management or any officer of the Labour Department that he was turned out from employment on 9th August, 1975. In this connection the demand notice dated 12th September, 1975 is the first document from the workman. If he was a member of trade union, he would have reported the matter to the trade union of 9th August, 1975 or 10th August, 1975 or a day or after two afterwards and the union would have taken up the matter. It seems plausible and highly probable that the workman absented after the first half of 9th August, 1975. The management did not take over his name on their rolls in the next month, as per their Standing Orders. The Standing Orders Ex. M-2 reads that if the workman absents for 7 days in case of permanent workman he shall deemed to have left the services of the Company without notice and the services of the employment shall stand terminated automatically. It further reads that if the workman offers himself for duty on 8th day and explain the reasons of his absence to the satisfaction of the Manager, the absence may be converted into leave without pay. If the workman does not so present himself and submits his explanation within the time mentions, he will not be liable to be excused. As per the Standing Orders,—vide its clause 10-H, the management treated the workman as having left the services of the Company. The management acted within the ambit of Standing Orders. When the two witnesses for the management appeared even they were not cross examined on the point that the workman was not absent. The conduct of the workman from 9th August, 1975 to 12th September, 1975 proves that the workman absented himself on and after the 2nd half of 9th August, 1975. The workman also admitted in his cross examination that he left the factory after doing half day work on 9th August, 1975, although he blamed the management that they did not give him work thereafter, but his silence on this alleged act of the management upto 12th September, 1975 leads me to conclude that it was the workman who absented himself on and after the 2nd half of 9th August, 1975. As per the Standing Orders, the workman is deemed to have left the

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services of the management. I, therefore, decide this issue in favour of the management.

Reference No. 89 of 1976.

# ISSUE NO. 2:

The decision of this issue is not necessitate, as this issue means that if the workman did not lose his lien on the job as a result of his continued absence from duty from 9th August, 1975 till 31st August, 1975, justifiably of termination of services shall be decided. I, already found issue No. 1 in favour of the management hence the question of termination of services or its justifiability does not arise. As a result of my findings on the issues I answer the reference and give my award that the workman left his services by remaining absent from 9th August, 1975 to 31st August, 1975 as per Standing Orders of the management and that the management did not terminate the services of the workman. The workman is not entitled to any relief.

between  
SHRI RAM KISHAN, WORKMAN AND THE  
MANAGEMENT OF M/S GOELA ENGINEER-  
ING AND WOOLLEN WORKS, E-53, INDUS-  
TRIAL AREA, PANIPAT.

Present :—

Shri Raghubir Singh, for the workman.

Shri Surinder Kaushal, for the management.

## AWARD

By order No. ID/KNL-25-A-76/43515, dated 23rd November, 1976, the Governor of Haryana referred the following dispute between the management of M/s Goela Engineering and Woollen Works, E-53, Industrial Area, Panipat and its workman Shri Ram Kishan, to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:

"Whether the termination of services of Shri Ram Kishan was justified and in order ? If not, to what relief is he entitled ?

On receipt of order of reference notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issues were framed by my learned predecessor on 4th April, 1977:

1. Whether the workman abandoned his job voluntarily of his own accord ?
2. Whether the termination of services of Shri Ram Kishan was justified and in order ? If not to what relief is he entitled ?

The case fixed for the evidence of the management. The management examined one Shri Rajinder Kumar, partner of the management as MW-1 and closed their case than the case was fixed for the evidence of the workman. The workman examined himself as WW-1 and another Shri Ramji Lal, workman and closed his case. Thereafter the management moved an application under order 18 rule 17 and 17 (a) of the C.P.C.

Dated the 27th September, 1978.

NATHU RAM SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

Endorsement No. 2827, dated the 23rd October, 1978.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

NATHA RAM SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 11(112) 3 Lab.-78/9602.—In exercise of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Geola Engineering and Woollen Works E-53, Industrial Area, Panipat.

BEFORE SHRI NATHU RAM SHARMA, PRE-  
SIDING OFFICER, LABOUR COURT,  
HARYANA ROHTAK.

read with section 151 C.P.C. and also for framing issue on a plea praying to call the attendance register and for framing an issue on the point of justifiability of termination of services of the workman and adducing it on the basis of evidence already led before this court. The application of the management was under an erroneous impression that justifiability of termination of services of the workman is not in issue, issue No. 2 is to that effect. Issue No. 2 reads that if issue No. 1 is not proved than issue No. 2 is as per reference i.e. involves the dispute referred to. The application of the management was dismissed because the issue regarding justifiability of termination of services of the workman had already been framed and the parties have contested this issue. I now give my findings issueswise:—

#### ISSUE No. 1 :

MW-1 stated that the workman had caused damaged to the management by mixing yellow cream colour wool with white wool in the yarn, thereby causing spots in the yarn. This witness stated that the machine was closed and cleaned to avoid further spoil of the yarn and it took full five hours and the management suffered a loss of production about 50 per cent and the management have to sell that yarn which was 450 Kg. in weight at the rate of Rs. 22-50 per Kg. instead of Rs. 33-50 per Kg. The management was to charge sheet the workman. They prepared a charge-sheet to serve on the workman. The workman was called in the office of the witness i.e., partner of the management. The workman refused to receive the chargesheet and went away and did not come thereafter to resume his duty. The yarn was spoiled by the workman on 26th July, 1976. The management waited for the workman to resume his duty upto 11th August, 1976, and thereafter struck off his name from their rolls on 12th August, 1976. The management placed a copy of their Certified Standing Orders Ex. M-2. He, further stated that after 27th July, 1976, they suddenly received the demand notice on 16th August, 1976. They replied the demand notice,—vide Ex. M-3. The management also tendered in evidence the report of the Conciliation Officer, Ex. M-4. In cross-examination this witness stated that the workman contributed to Provident Fund and E.S.I. scheme. The workman has not supplied his permanent and temporary address. He stated that copy of chargesheet was not displayed on a prominent

place in the factory after the workman had refused to receive it, nor the enquiry was held. This witness denied that the management terminated the services of the workman by turning him out of the factory. There is not a single question put by the representative for the workman in cross-examination regarding absence of the workman. The workman stated that no charge-sheet was served on him and he tendered in evidence a copy of the application sent by him to the management. He further stated that he never absented nor enquiry was held against him. In examination in chief he did not state a single word regarding the damage alleged to have been caused by him in order to the effect that he did or did not refused to receive the charge sheet or he did and did not leave the factory when the charge sheet was presented to him. The statement in examination in chief of the workman is reproduced below :—

“No chargesheet was ever served on me. I tender in evidence the copy of the application sent by me to the management. I never absent myself. No enquiry was held against me”.

The workman did not rebut the allegations of the management made by MW-1 in his statement except that he did not absent himself. The letter of the workman Ex. W-2, dated 29th July, 1976, bears the endorsement in ink “Regd” when the representative for the management cross-examined the workman as to the postal receipt and A.D. form in connection with this letter, the workman replied both these documents were lost by him than the representative for the management cross-examined him that Ex. W-2 was fabricated which the workman denied. In cross-examination the workman stated that he reported for duty when the wool had already been prepared for process. He further stated that he was turned out after being beaten. He further stated in cross-examination that he had made a complaint to his fellow workman Shri Ramji Lal regarding this. Shri Ramji Lal, WW-2 also stated that he had asked the partner of the management as to why the workman was turned out from service without serving any charge-sheet or without holding any enquiry. WW-2 in cross-examination stated that he made this complaint on 26th July, 1977, but it was all oral. I have also gone through the documents adduced in evidence. Ex. W-2 is addressed to the Manager of the management and

copy sent to the Labour Commissioner, Haryana Chandigarh, Labour Officer, Panipat and Labour Inspector Panipat. It is dated 29th July, 1976. It bears an endorsement registered in ink at the top of this letter but the postal receipt and the A.D. have been withheld. I, do not believe the statement of the workman made by him in cross examination that all these documents have been lost by him. These documents were very important for him and if he lost them he should have been report the loss to some authority in order to create a proof of his loss. He could summon the records of the Labour Commissioner Haryana Chandigarh and Labour Officer and Labour Inspector, Panipat to prove that these documents reached their office. I do not believe that the original of Ex. W-2 was sent to the management by the workman when the postal receipts and A.D. forms pertaining to it are not forthcoming. Ex. W-1 is the reply of the management to the demand notice of the workman, dated 14th August, 1976. This contains of the allegations of the management. The stand of the management is consistent from the very beginning. Even this original Ex. W-1 has been produced by the workman, which may mean that the workman relies on it. Ex. M-4 is the proceedings of the Conciliation Officer. Their also allegations of the management are contained fully in the statement of the representative for the management. Ex. M-3 is a copy of the reply to the demand notice of the workman, dated 14th August, 1976, which the management produced. Ex. M-2 is a copy of sub-clause 'G' of clause 10 of the Certified Standing Orders of the management. Ex. M-1 is the chargesheet that was to be given to the workman, which as per the management, the workman did not receive and left away the factory. There is no other document on the file. According to the workman it was the management, who terminated his services on 27th July, 1976 and according to the management it was the workman, who refused to receive the chargesheet on 27th July, 1976 and left away and thereafter did not turned up for duty upto 11th August, 1976. The workman raised demand for the first time on 14th August, 1976. He did not do anything prior to 14th August, 1976 to prove that he was not present and was prior to join his duties. From 27th July, 1976 to 11th August, 1976, he reported the matter to none, even he did not sent any letter to the management or to the Labour Officer or the Labour Inspector. Had the workman produce the postal receipt regard-

ing registration pertaining to Ex. W-2 and the A.D. form pertaining to this letter, it would have been believable that the workman asked for duty and reported the matter that he was turned out of service by the management on 27th July, 1976. When the original of Ex. W-2 was sent to the management and other officer by registered post, None production of its postal receipt and A.D. forms caused very heavily against the workman. It means that he did not send any such letter and the copy Ex. W-2 might have been prepared afterwards, otherwise there is no reason how its postal receipt and A.D. form would not have been kept properly by the workman with him. The workman did not cross examined the managements witness on the point of his absence or on the point of damage alleged to have been caused by the workman. This leads me to conclude that the workman absented himself after 27th July, 1976 and the management struck off his name from the rolls as per their Standing Orders when the workman absented for 16 days upto 11th August, 1976. The Certified Standing Orders provides that if a workman absent for 8 days in case of permanent workman shall be deemed to have left service of the Company without notice. I, therefore, decide issue No. 1 in favour of the management.

#### ISSUE No. 2 :

There is no necessity of deciding issue No. 2 when issue No. 1 has been found in favour of the management. Although the management adduced in evidence the statement of their partner alleging damage caused to them by the act of the workman, which was not rebutted by the workman in his examination in chief. The statement of WW-2, Shri Ramji Lal is also not believable but issue No. 2 matters only when issue No. 1 is not decided in favour of the management. but I have decided issue No. 1 in favour of the management. As a result of my findings on the issues, I answer the reference and give my award that the workman abandoned his job of his own by remaining absent for 16 days and the management was correct in treating the workman as having abandoned his job as per their Standing Orders. He is not entitled to any relief.

Dated the 26th September, 1978.

NATHU RAM SHARMA,  
Presiding Officer,  
Labour Court, Haryana, Rohtak.

Endorsement No. 2826, dated 23rd October, 1978. section 15 of the Industrial Disputes Act, 1947.

Forwarded, (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under

NATHU RAM SHARMA,  
Presiding Officer,  
Labour Court, Haryana, Rohtak.

The 17th November, 1978

No. 11(112)—3 Lab. 78/10101.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the presiding Officer Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Technological Institute of Textile Bhiwani.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK.

Reference No. 113 of 1977

between

SHRI PARTAP SINGH WROKMAN AND THE MANAGEMENT OF M/S TECHNOLOGICAL INSTITUTE OF TEXTILE BHIWANI

Present :

Shri Sagar Ram Gupta, for the workman.

Shri B.R. Ghai, for the management.

#### AWARD

By order No. ID/HSR/331-77/45123, dated 14th October, 1977, the Governor of Haryana referred the following dispute between the management of M/s. Technological Institute of Textile Bhiwani and its workman Shri Partap Singh to this Court for adjudication in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :

“Whether the termination of services of Shri Partap Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference notices were issued to the parties. The parties appeared, and filed their pleadings. On the pleadings of the parties the following issues were framed by my learned predecessor on 2nd January, 1978.

- (1) Whether the reference in respect of the demand of the workman praying for his posting on a specific particular job alleged to have been held by him earlier is valid and legal and covered by section 2(a) of the Industrial Disputes Act ?
- (2) If yes whether the direction of the management concerned to the workman to work in time office on the same scale of pay and agreed amounts to his degradation ? If yes, to what effect ?
- (3) Whether the workman is legally entitled to the retention of his job with the General Manager of the management concerned ?

Thereafter the workman did not press all these issues. Therefore, my learned predecessor decided all the three issues in favour of the management,—vide his order, dated 1st February, 1978. My learned predecessor then framed the following issues on 1st February, 1978 and fixed the case for the evidence of the workman :

- (1) Whether the management terminated the services of the workman ? If yes, from what date ?
- (2) In case of proof of issue No. 4 whether the termination of services of Shri Partap Singh was justified and in order ? If not, to what relief is he entitled ?

The workman examined himself as WW-1 and another workman Shri Milap Singh as WW-2. Both of them stated that the workman used to be a peon at the residence of the then General Manager and was also working in his office as a peon and Shri N. M. Jain told the workman in or about April, 1977 that his services stood terminated and he should not come on duty thenceforth. The workman proved certain documents. In cross-examination he stated that he used to go often to the residence of Shri P. D. Makharia the then Ex. General Manager while being on actual duty in office and he was doing some light-work also at his residence. He

denied that he used to work whole time at his residence. The workman has joined the services of the management as a peon in the year 1942 and continued to work as such till about April, 1977. WW-2 corroborated WW-1. The workman closed his case. Then the management examined Shri N. M. Jain their Factory Manager who stated that the workman was a peon from 1947 till March, 1977 and he was absent from 1st April 1977 4th April, 1977. He was present on 5th April, 1977 but on leave from 6th April, 1977 till 16th April, 1977. He got extension of leave from 16th April, 1977 to 31st May, 1977 and thereafter he remained absent. He also proved some documents of the management and the conciliation proceedings. He denied that the management terminated the services of the workman and that the workman should not attend his duties. He further, stated that the name of the workman continued on their rolls through out the year 1977. He, further stated that the workman stopped attending duties because the workman was telling that he was head peon and could only work in the office of the General Manager. The workman was asked to work in time office as peon. In cross examination he admitted that the workman has a continuous service in his Mills for about 30 years and that Shri P.D. Makharia was the General Manager since 1947 till the end of 1975. He admitted that the workman was working and attending the residence of Shri P.D. Makharia the then General Manager as a peon. He further admitted in cross examination that the workman used to attend the office and work there also as a peon. He denied the suggestion that after Shri P.D. Makharia left the Mills the new management wanted to get rid of the workman and harass him. He further admitted that the wages of this workman was some what higher by Rs. 15 or Rs. 20 than the wages of other peons due to seniority but this higher wage of the workman was not one account of his being a supervisor. He denied that he ever asked the workman not to attend his duties. He admitted that the workman worked in the time office for one day and that the management did not issue any charge sheet to him regarding his absence. Although they wrote a letter to him dated 20th July, 1977. He further stated that they did not struck off the name of the workman from their rolls as per standing Orders although the workman remained absent for a very lengthy period. The management closed the case. I have gone through the entire evidence of the parties oral as well as documentary. I have also heard arguments of both the parties at length. There is correspondence on the file suggesting that some feeling was going on between the management and the workman. The admitted facts are that the workman was a peon at the residence and office of an Ex. General Manager named Shri P.D. Makharia. Shri P.D. Makharia has left the services of the management. The post became surplus. The management could retrench the workman but they transferred him as a peon in the time office. This was not bad not on that part of the management, rather a good act on their party. The correspondence reveals that the workman had desired to work as peon in the office of the General Manager but that did not materialise. Although the new General Manager might also be having a peon in his office or to attend his office but this could not entitle the workman to work as a peon in his office alone. As the workman used to work at the residence of the then General Manager also, it was more or less a matter of confidence also. The peon at residence is generally a man from whom confidence is required. The correspondence exchanged between the parties suggests according to the workman that the workman was put to harassment by management and according to the management the workman wanted to work in the office of the General Manager which the management could not do and that the management was not harassing him. A bone of contention is deducible from the correspondence which is contained in Exhibit W-1, W-2, 3, W-4, Exhibit M-1, M-1, M-3, M-4, M-5, M-14, M-15, M-16, M-17, and M-18 etc. It reachew such a stage that even once the workman requested the management to pay him Gratuity and Provident Fund etc. Exhibit M-13 is the conciliation proceedings. The real point in controversy between the parties is whether the management terminated the services of the workman or not. The management states that they have not terminated the services of the workman. The workman states that the management has terminated his services. Lastly on the date of hearing of arguments, the learned representative for the management Shri B.R. Ghai made a statement that during the conciliation as well as adjudication, it has been the stand of the management that it has not terminated the services of Shri Partap Singh the workman concerned and it is upon to him to join his duties in time office if he so likes subject to the right of the management to take action for absence. From the above statement it is probable that if the workman joins duties, the management shall take action against him for absence and then again another dispute shall arise. The action of the management might encourage dispute. When the management transferred the workman in time office, the workman went there and joined his duties. Thereafter it cannot be concluded that the workman himself abandoned his job or wanted to abandoned his job. The learned representative for the workman Shri Sagar Ram Gupta argued that the workman was head peon and he was degraded to a peon in time office. He further argued that transfer of the workman to a lower post is detrimental to the rights of the workman and was against law and the workman had a right to disobeyed the illegal orders. He further argued that although the workman did not disobey even the illegal order, and obeyed that illegal order and joined his duties as an ordinary peon in the time office. He proceed to draw an inference to the effect that the workman was head peon. From the fact that the workman was admittedly a peon in the office and at the residence of the General Manager. He had a higher status to that of other peons, and he was drawing a pay higher to that which other peon drew. It might be possible that a peon in the office and at the residence of the General Manager, might be feeling a superior status and might be having certain previlages or other kind of benefits, but from that very fact, I am unable to draw a presumption that the workman was head peon. To be a head peon, designation and post of head peon is required for which I have no evidence on this file. The learned representative for the management Shri B.R. Ghai very ably argued that the higher wages of the workman was on account of seniority and he brought this point home. I, therefore, hold that the workman was not a head peon although he was drawing higher wages and might be enjoying certain amenities previlages or benefits which are naturally attached to the office of the General Manager, because he was also working as a peon at the residence of the General Manager. But this does not entitle him to claim the post of head peon or to claim to work at the residence or in the office of the General Manager. I have already discussed that if the General Manager takes

work from a peon at his residence another General Manager may not like to take work from that workman at his residence, as it involves a matter of confidence, as far as domestic affairs are concerned. Similar is the case as far as affairs of the office of the General Manager are concerned. It can safely be deduced that the workman was feeling harassment as is evident from the correspondence. Then there might be some reason behind that feeling. Whatever be the intention of the management against the workman, ostensibly they had nothing wrong in transferring the workman in time office. Shri B. R. Ghai, the learned representative for the management argued that the contention of the workman that the management terminated his services in April 1977 is falsified from Ex. M-7 which is an application from the workman praying for sanction of leave from 16-4-77 to 1-5-77 and from 1-5-77 to 1-6-77, but it was repelled by Shri Sagar Ram Gupta that this application was written during the conciliation proceedings, at the intervention of the Conciliation Officer, as such, by WW-I and this part of the statement has not been rebutted by the management at all. Therefore, it is correct to hold that Ex. M-7 was written during conciliation proceedings. When Ex. M-7 was written during conciliation proceedings, it cannot amount to be an application from the workman of his own praying for leave for the period mentioned in it. This fact is also corroborated from the application itself as the application is undated and bears no date otherwise the workman would have put for a date on this application. It, therefore, means that the workman was not absent. If the management still wants to take action against the workman for his absence, which is a subject matter before this court decide, the intention of the management against the workman is evident. In the circumstance of the case, I cannot conclude that the workman abandoned the job of his own. I rely on the statement of the workman corroborated by another witness that the management asked him not to go to the mills to work and thereby terminated the services of the workman. Shri Sagar Ram Gupta again argued vehemently that the course of events in this case proved that all the acts of the management amounted to termination and it was constructive termination also. He argued that there is express termination by words of Shri N. M. Jain the Factory Manager as well as constructive termination by course of events leading to and resulting in termination. But Shri B. R. Ghai argued that when Shri Sagar Ram Gupta has argued express termination he cannot argue constructive termination. The termination, should be of one kind only either express or constructive. Shri Sagar Ram Gupta placed reliance on 1978 L.I.C. page 975. He also argued that the management have kept the name of the workman on rolls the case of the workman, otherwise they could struck off his name as per the Standing Orders and this plea they are taking only to defeat the case of the workman and thereby to harass him again and again. Shri B. R. Ghai further argued that the pleadings in para No. 2 and 3 of the claim statement do not support the plea of termination of services. I have gone through para No. 2 and 3 of the claim statement. Para No. 3 clearly mention that the management persisted in its illegal and arbitrary attitude and stopped this workman from doing this job. Para No. 4 clearly states that the workman is entitled to reinstatement at his usual job of head peon with full back wages. Shri B. R. Ghai emphasised on the use of the word "thus" preceding and stopped this workman from doing this job. Shri B. R. Ghai qualified the word "thus" by the statement in para No. 2 i.e. post of head peon. From the circumstance and facts as before me, I find that the management has terminated the services of the workman. It is not the case of the management that the workman lost his job by remaining absent as per the standing orders. The management has not placed their standing orders even on his file. I, therefore, decide issue No. 4 in favour of the workman. It has yet to be decided as to from what date the management terminated the services of the workman. As per the workman, the management terminated his services in the month of April, 1977 but in conciliation proceedings the management regularised his period from 16-4-77 to 1-6-77 as leave. In view of this regularisation of the period upto 1-6-77, the termination of services of the workman may be deemed to take effect from 2-6-77.

*Issue No. 5:*—As issue No. 4 has been proved, that the management terminated the services of the workman, the question of its justifiability arises. I therefore, hold that the termination of services of the workman Shri Partap Singh was not in order and not justified. In view of my findings on the issues, I answer the reference and give my award that the termination of services of the workman concerned Shri Partap Singh was not in order. nor justified. He is entitled to reinstatement with continuity of service and with full back wages.

Dated, the 20th October, 1978.

NATHU RAM SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 2934, dated, the 6th November, 1978

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak,